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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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Federal Communications Commission
Office of the Secretary

In the Matter of

The Telephone Consumer Protection
Act of 1991

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CC Docket No. 92-90

To: The Commission

REPLY COMMENTS OF THE STUDENT LOAN MARKETING ASSOCIATION

The Student Loan Marketing Association ("Sallie Mae"), by its attorneys, respectfully submits its reply to the comments of other parties on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, 7 FCC Rcd 2736 (1992) ("Notice").

INTRODUCTION

The comments in this proceeding fully support adoption of an exemption for debt collection calls from the restrictions on autodialers contained in the Telephone Consumer Protection Act of 1991 ("TCPA"). The record confirms that calls made for the purpose of debt collection do not raise the concerns about privacy that Congress intended to address in the TCPA. Parties agree that exemption of such calls is consistent with the

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legislative history of the TCPA and with the reasonable needs of loan servicers. 1/

The principal issue for the Commission, then, is whether the proposed exemptions for calls made to parties where a business relationship exists and for calls that do not involve the transmission of an unsolicited advertisement obviate the need for a separate exemption for debt collection calls per se. After reviewing the comments of other parties, Sallie Mae continues to believe that a separate exemption for debt collection calls is unneeded, provided that the Commission does not narrow its proposed exemption for calls that do not involve the transmission of an unsolicited advertisement.

DISCUSSION

As explained in its initial comments, Sallie Mae currently uses autodialers to service loans in compliance with the Department of Education's guaranteed student loan program regulations. Those regulations generally require that Sallie

1/ See, e.g., Comments of Coalition of Higher Education Assistance Organizations, Comments of Ohio Student Loan Commission. The handful of parties who oppose such an exemption do not present any evidence to support their position beyond a general objection to all use of autodialers. See, e.g., Comments of Private Citizen, Inc. However, their position was rejected by Congress, which clearly intended to permit autodialer use for debt collection to continue unimpeded.

Mae contact borrowers if payment is overdue and that efforts be made to locate a borrower if Sallie Mae learns that the borrower's address and/or telephone number may have changed. In the latter case, calls may have to be made to the borrower's references and relatives.

It is critical that Sallie Mae be permitted to continue to use autodialer technology to perform these tasks most efficiently. Sallie Mae handles approximately \$22 billion in student loans. By "queuing" calls and referring only answered calls to live operators, the autodialer substantially increases the number of calls that Sallie Mae personnel can place and the number of calls that are successful in reaching the called party. 2/ Such cost-saving techniques are particularly important to Sallie Mae because student loan interest rates are fixed by law, and Sallie Mae cannot pass on higher operating costs to borrowers.

Congress clearly contemplated that debt collection calls, and in particular calls concerning student loans, would be exempt from the provisions of the Act. 3/ Sallie Mae's

2/ Other commenting parties agree that the use of automated equipment significantly enhances the efficiency of debt servicing. See, e.g., Comments of the American Bankers Association at 3; Comments of the National Retail Federation at 6.

3/ See Comments of Sallie Mae at 6 & n.7.

calls are not similar to the intrusive telemarketing calls that were the focus of the TCPA. Sallie Mae's system is designed to minimize the use and length of prerecorded messages. Called parties rarely hang up on the message, indicating that most do not find the calls annoying.

Sallie Mae's use of autodialers comes within the exemptions currently proposed by the Commission. Calls to borrowers are exempt because of the business relationship between Sallie Mae and the borrower that arises at the time of Sallie Mae's purchase of the loan. 4/ Other loan servicing calls, such as those to relatives or references in order to contact a borrower, come within the general exemption for calls that do not involve transmission of an unsolicited advertisement.

Sallie Mae also agrees with other commenting parties that calls to telephone numbers provided by the called party satisfy the "prior express consent" requirement of the TCPA. 5/ The TCPA prohibits calls to certain types of numbers,

4/ Sallie Mae believes that the assignee of a loan clearly has a business relationship with the borrower even though it is not the original lender. However, the Commission may wish to confirm this intention expressly. See, e.g., Comments of Teknekron Infoswitch at 3; Comments of Wells Fargo Bank at 2.

5/ See, e.g., Comments of Banc One Corporation at 10-11; Comments of the National Retail Federation at 3-5; Comments of Household International at 5; Comments of J.C. Penney at 5-6.

including health care facilities and cellular telephone numbers, without the prior express consent of the called party. 6/ However, Sallie Mae relies on numbers provided by the borrower, and has no way of knowing whether a number provided on a loan application is assigned to a doctor's office or is a cellular number. In fact, some borrowers may prefer to be contacted at a work number (including those who work at health care facilities) or on their car phone. Sallie Mae should not be penalized for calling such numbers when the number has been provided by the called party.

Sallie Mae's collection procedures are reasonable, non-intrusive and consistent with Department of Education guidelines on guaranteed student loan processing. Adoption of the TCPA exemptions proposed by the Commission in their current, unrestricted form will permit Sallie Mae to continue to service its loans in a cost-effective manner.

We again stress one vital concern, however. As explained in its initial comments, Sallie Mae and other loan servicers cannot rely on the business relationship exemption alone. Thus, if the Commission limits the exemption for nonsolicitation calls, a separate debt collection exemption will be needed to adequately protect Sallie Mae's loan


6/ See 47 U.S.C. § 227(b)(1)(A).

servicing procedures, and in particular its procedures for locating a borrower through references and similar parties.

Respectfully submitted,

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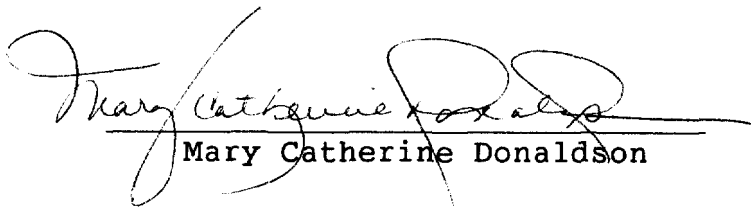
CERTIFICATE OF SERVICE

I, Mary Catherine Donaldson, hereby certify that on this 25th day of June, 1992, a copy of the foregoing "Reply Comments of the Student Loan Marketing Association" was served by hand on the following:

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